
THE TRIALS AND TRIBULATIONS OF ANTI-TRUST ACTIONS.

Presentation to the Dutch Association of Competition
Law.

By Anthony Maton, a Partner at Hausfeld & Co LLP

HAUSFELD & CO_{LLP}

WASHINGTON, DC
NEW YORK
PHILADELPHIA
SAN FRANCISCO
LONDON



Anti-trust Claims

- European Claims –
 - Usually follow on claims;
 - From a regulatory body's findings.
- In comparison to US Claims –
 - Class action based; and
 - Filed as soon as potential infringement is uncovered.
- Many common issues arise out of this rapidly evolving area of law as considered below.

Jurisdiction

- Cartel often spans many European/Global jurisdictions.
- Preferable jurisdictions.
- Anchor defendants – is a subsidiary enough?
- Are multiple jurisdictional hearings possible?

Governing Law

- Principal Defendants “home” jurisdiction.
- Governing Law clauses.
- The governing law of the case may have a significant impact on costs and damages awarded.

Limitation Period

- Varies considerably throughout Europe.
- 2 different limitation periods in E&W depending on choice of court.
- Defendants agreeing to Standstill Agreements – is this enough?
- Can the limitation period be extended?

Court assessment of Damages

- How will courts assess damages?
- To what level do economists analysis assist the courts?
- Level of damages dependant on contributing factors such as length of cartel and market dominance.

Overcharge

- Quantified as a % of the total cost of purchase value.
- How is overcharge established?
- Commission conclusions and economists reports.
- The “Umbrella” affect.

Pass-On

- Pass-on as a viable defence to claims for damages.
- How is pass-on measured?
- In what circumstances is pass-on a real factor in considering the total damages recoverable?

Contribution

- Joint and Several liability.
- Who may contribution be claimed from?
- What is a Defendants liability once settlement is reached?
- Civil Liability (Contribution) Act 1978 – “same damages”.

Settlement

- Pre-trial settlements.
- Mediation – can a business relationship be maintained?
- Global and individual settlements, how easy is it to obtain one or other?

As has been demonstrated, there are many trials and tribulations surrounding Claimant recovery in the EU, many of which are still open to interpretation.

Any Questions?

Anthony Maton
Hausfeld & Co LLP
12 Gough Square
London
EC4A 3DW